No. 97-1396

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1997

VICKY M. LOPEZ, CRESCENCIO PADILLA, WILLIAM A. MELENDEZ, and DAVID SERENA, *Appellants*,

v.

MONTEREY COUNTY, CALIFORNIA, STATE OF CALIFORNIA, *Appellees*,

and

WENDY DUFFY, *Intervenor-Appellee*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

APPELLANTS' BRIEF IN OPPOSITION TO APPELLEE'S MOTION TO AFFIRM

Joaquin G. Avila
Counsel of Record for Appellants
Joaquin G. Avila
Voting Rights Atty.
Parktown Off. Bldg.
1774 Clear Lake Ave.
Milpitas, CA 95035
Ph: (408) 263-1317
FAX:(408) 263-1382

Robert Rubin
Oren Sellstrom
Lawyers' Committee for Civil Rights of the San Francisco Bay Area
301 Mission Street, Suite 400
San Francisco, CA 94105
Ph: (415) 543-9444
FAX: (415) 543-0296

Denise Hulett
Mexican American Legal Defense and Ed. Fund
182 Second Street, 2nd Floor
San Francisco, CA 94105
Ph: (415) 543-5598
FAX: (415) 543-8235

Counsel for Appellants
(Additional Counsel on Inside of Cover)

13 pp

Additional Counsel for Appellants

Prof. Barbara Y. Phillips
University of Mississippi Law School
University, Mississippi, 38677
Phone: (601) 232-7362

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The State of California misstates the issue before this Court. The question is not whether §5 of the Voting Rights Act applies to the State. Rather, the quite simple question is whether a covered jurisdiction's voting changes, regardless of subsequent legislative enactments, can be implemented without §5 preclearance.

Appellee devotes much attention to the unremarkable and uncontested notion that the State of California possesses the

authority to organize and prescribe the power of municipal courts. Motion to Affirm ["Mot."] at 5-8. But, for purposes of §5, that proposition is immaterial. This Court already has determined that Monterey County's county-wide municipal court system, dependent upon antecedent County ordinances, is subject to, but has not received approval under, §5. *Lopez v. Monterey County,* 117 S.Ct. 340, 345 (1996).

Nonetheless, in a transparent attempt to convert this straightforward §5 coverage case into a broad-based threat to state sovereignty, the State persists in protesting that it cannot be held subject to the preclearance requirements of §5. This Court should disregard that distraction as Appellants do not contend that the State itself is covered by §5. Instead, the Court's analysis must determine whether the covered County has "enacted" or "administered" a voting change without obtaining preclearance. Knowing that the answer to this plain language inquiry must be in the affirmative, the State rewrites §5 by substituting the word "initiate" for the statutory language of "enact" or "administer." *See, e.g.*, Mot. at 13. This Court must reject the State's attempt to alter the express terms of §5.

I. THE CREATION OF THE CURRENT COUNTY-WIDE COURT IS DEPENDENT UPON ANTECEDENT, UNPRECLEARED COUNTY ORDINANCES

The State argues that the current county-wide municipal court system is administered pursuant to state statute. Assuming *arguendo* the truth of that statement, the relevant and undisputed fact is that, without being subjected to §5 preclearance, Monterey County ordinances *established* the county-wide district.

An examination of the ordinances reveals that the judicial district consolidation process was originated and driven by Monterey County, not the State. J.S. 22. "Between 1972 and

1983, the County adopted six ordinances, which ultimately merged the seven justice court districts and the two municipal court districts into a single, county-wide municipal court." *Lopez* 117 S.Ct. at 344. While it is true that various pieces of state legislation also were directed at Monterey County's judicial system, this Court found that several of these laws actually "reflected changes in the County's judicial districts *resulting from the consolidation process*." *Id.* (emphasis added).

Moreover, none of the state statutes by themselves ever mandated the creation of a county-wide municipal court district. The 1979 statute, Cal. Stats. ch. 694, only created a single municipal court district which did not encompass the entire county.[1] J.S. App. 33.[2] Monterey County Ordinance 2930 consolidated the remaining districts into a single county-wide municipal court district.[3] J.S. App. 79.

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[1] Even the 1979 statute reflected the County's policy choices. Prior to the enactment of that statute, County Ordinance No. 2524 had consolidated the same three municipal court districts into one district. J.S. 16.

[2] The subsequent state statutes also did not establish a county-wide municipal court district. All of the statutes related to the number of judges assigned to the municipal court: Cal. Stats. 1983, ch. 1249, J.S. App. 35; Cal. Stats. 1985, ch. 659, J.S. App. 37; Cal. Stats. 1987, ch. 1211, J.S. App. 38 - 39; Cal. Stats. 1989, ch. 608, J.S. App. 40; Cal. Stats. 1993, ch. 1091, J.S. App. 42. The 1989 statute, although recognizing that there was a county-wide district in Monterey County, cannot be interpreted as establishing such a district. J.S. App. 8 (District Court held that 1989 statute did not establish a county-wide district).

[3] The State attaches great significance to the fact that Monterey County Ordinance 2930 received Section 5 preclearance. The Supreme Court recognized that the

In fact, the state statutes alone are meaningless. The statutes did not define the boundaries of the judicial districts. Rather, the boundaries were defined by the various county ordinances. This fact is significant for two reasons. First, the absence of any boundary descriptions of the judicial district consolidations indicates that the statutes were not the exclusive legislative mechanism for the consolidations of judicial districts resulting in a county-wide district. The statutes need to be read in conjunction with the county ordinances. Second, the boundary changes occasioned by the county ordinances have yet to receive the necessary Section 5 preclearance. *Lopez*, 117 S.Ct. at 345. To the extent that the state statutes reflected these boundary changes, the statutes must also receive Section 5 approval.[4] This review of the relevant statutes and ordinances is fatal to Appellee's contention that the sole authority for conducting county-wide elections is the state's statutory scheme.

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establishment of the county-wide municipal court district was the result of a series of judicial district consolidations. *Lopez,* 117 S.Ct. at 344. And the Supreme Court also recognized that the previous consolidation ordinances cannot be deemed to have received Section 5 approval merely because the final consolidation ordinance received the requisite Section 5 preclearance. *Id.,* at 345. For this reason, the Supreme Court directed Monterey County to seek approval of these antecedent county ordinances.

[4] Changes in the size and composition of voting constituencies are changes subject to Section 5 preclearance. *Perkins v. Mathews,* 400 U.S. 379, 394 (1971) (change from district election to at-large election subject to Section 5 approval). *See also* 28 C.F.R. § 51.13 (e) (changes subject to Section 5 preclearance include "... changing to at-large elections from district elections, or changing to district elections from at-large elections....").

The State's argument is further undermined by its own recitation of the chronology subsequent to the recommendations of the State's Judicial Council. *See* Mot. 6-8. The State suggests that, given the recommendations of the Judicial Council, the county-wide district must be viewed as the result of state-mandated changes. Yet the State acknowledges that the Council's statutory function is only to *recommend* consolidation of judicial districts. *Id.* Thus, the County was under no legal compulsion to adopt the consolidation ordinances.

This Court need only determine whether the establishment of the county-wide district incorporated voting changes subject to §5. 42 U.S.C. § 1973c. And the record is clear that the county-wide system was established over a period of time through a series of judicial district consolidations. These consolidations changed the size and racial and ethnic composition of the voting constituencies located within the various judicial districts. Thus, each of the county ordinances and those state statutes reflecting these judicial district consolidations are subject to Section 5 preclearance.

II. APPELLEE'S PROFERRED INTERPRETATION WOULD FRUSTRATE THE PLAIN LANGUAGE OF SECTION 5

Even if the county-wide election system were solely the product of mandated state legislation, Monterey County, as a covered jurisdiction, would be required to submit the election changes for preclearance prior to their implementation. The state disputed this proposition by conflating the distinct statutory terms "enact" and "administer" into a single term -- "initiate." Mot. at 13-17. The State would have this Court hold that when Congress referred to a voting change in §5, it meant only those changes "initiated" by the covered jurisdiction. But, as reflected in the actual language of the statute, Congress' concerns were clearly broader. Contrary to the State's

proferred interpretation, §5 does not focus on the branch of government (legislative or executive) in which a voting change is initiated. *See* Mot. at 14-15. Indeed, if Congress wanted to address the notion that §5 voting changes applied distinctively to "legislative" and "executive" actions, it would have employed those easily understood terms. But Congress was not concerned about the source (legislative vs. executive or state vs. local) of the voting change. Congress wanted to prevent discriminatory voting changes whether initiated, *i.e.*, "enacted," *or* "administered" by a jurisdiction subject to §5. Its focus was on the covered jurisdiction and whether its voting practices were being changed. If so, as here, the change was subject to §5 and could not be implemented without preclearance.

In its earlier decision in this case, the Court essentially acknowledged the propriety of Appellants' interpretation and its focus on whether there has been a voting change in the covered jurisdiction, and not on the source of that change. In rejecting the State's prior argument that the District Court could order the County to conduct elections under the unprecleared, at-large system, this Court reflected on §5's plain language mandate: "A jurisdiction subject to § 5's requirements must obtain either judicial or administrative preclearance before *implementing* a voting change. *No new voting practice is enforceable* unless the covered jurisdiction has succeeded in obtaining preclearance." *Lopez*, 117 S.Ct. at 347 (citations omitted) (emphasis added). Simply stated, §5's mandate is directed at the implementation of voting changes in covered jurisdictions.

This Court's analysis in *United States v. Board of Comm'rs of Sheffield*, 435 U.S. 110 (1978), lends support to this plain language construction. *Sheffield* addresses the interplay between covered and noncovered jurisdictions in determining the scope of §5's preclearance requirements. Although *Sheffield* involved the application of §5 to a city within a covered state,

the Court's rationale was that a covered jurisdiction should not be able to avoid the reach of §5 by encouraging the noncovered jurisdiction to adopt the voting change. *Sheffield*, 435 U.S. at 125. That rationale applies with equal force to the instant circumstance. *See* Brief for the United States as Amicus Curiae 13-16 (describing practice of "local courtesy" by which state legislators routinely approve locally applicable legislation sponsored by local jurisdiction's legislative delegation).

In *Dougherty County Bd. of Educ. v. White,* 439 U.S. 32 (1978), the Court relied upon *Sheffield* in rejecting an argument, analogous to the District Court's rationale here, that a jurisdiction must exercise its own control over a voting change before §5 is implicated. In *Dougherty County*, the County sought to distinguish *Sheffield* by arguing that, since its local Board of Education did not "exercise control" over the voting process, *Sheffield*, 435 U.S. at 127, it was not subject to §5. This Court rejected that "cramped reading," emphasizing that §5 is directed at "the impact of a change on the electoral process, not to the duties of the political subdivision that adopted it." *Dougherty County,* 439 U.S. at 44-45. That analysis supports the plain language construction of §5 that focusses simply on whether a covered jurisdiction implements a voting change without regard to its legislative source.

Conclusion

For the reasons stated herein and in the Jurisdictional Statement, the Court should summarily reverse the judgment of the District Court. Alternatively, the Court should note probable jurisdiction.

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Respectfully submitted,
Joaquin G. Avila
Counsel of Record for Appellants

Joaquin G. Avila
Voting Rights Attorney
Parktown Office Building
1774 Clear Lake Ave.
Milpitas, California 95035
Phone: (408) 263-1317
FAX: (408) 263-1382

Robert Rubin
Oren Sellstrom
Lawyers' Committee for
Civil Rights of the San
Francisco Bay Area
301 Mission St., Ste. 400
San Francisco, CA 94105
Phone: (415) 543-9444
Fax: (415) 543-0296

Prof. Barbara Y. Phillips
University of Mississippi
Law School
University, MS 38677
Phone: (601) 232-7361

Denise Hulett
Antonia Hernandez
Mexican American Legal
Defense and Educational
Fund
182 Second Street,
2nd Floor
San Francisco, CA 94105
Phone: (415) 543-5598
Fax: (415) 543-8235